

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

OLIVIA SELTO et al,  
Plaintiffs,

V.

COUNTY OF CLARK et al,  
Defendants.

NO. 22-cv-5384

# **ORDER GRANTING DEFENDANTS' MOTION FOR STAY OF TRIAL PROCEEDINGS**

This matter comes before the Court on the “Unopposed Motion to Stay Trial Court Proceedings” filed by Defendants, pending resolution of their interlocutory appeal of this Court’s denial of their motion for summary judgment on qualified immunity. *See Order Denying Pls.’ and Defs.’ Mots. Summ. Judgment*, Dkt. No. 65. Trial in this matter is scheduled to begin on October 30, 2023, with the Joint Pretrial Statement due October 9 and the Pretrial Conference scheduled for October 23. Plaintiffs have indicated that they object to a stay, Defs.’ Mot. at 2, but in their cursory response brief, which includes no argument in opposition to the stay, merely “acknowledge the issue of judicial economy.” Pls.’ Resp. at 1.

“A district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable ‘final decision’ within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment.” *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

ORDER

1 If a defendant who has been denied a grant of qualified immunity files an appeal of that denial,  
2 the district court is divested of jurisdiction over the claims from which qualified immunity has  
3 been asserted, and a stay is automatic unless the district court certifies that the appeal is  
4 “frivolous.” *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir.1992).

5 The Court is reluctant to grant the stay. A delay of trial disrupts the Court’s schedule, and  
6 magnifies the problems created by witnesses’ fading memories. In this case, however, the Court  
7 cannot say that appeal of the denial of qualified immunity is frivolous, particularly without the  
8 benefit of Defendants’ appeal briefing and in the absence of Plaintiffs’ argument on the matter.  
9 Furthermore, proceeding on the claims that are not the subject of the appeal (*i.e.*, the state-law  
10 claims) would create inefficiencies that may be avoided by a stay of the entire matter.

11 Accordingly, the Court grants Defendants’ Motion for a Stay. The remaining deadlines in  
12 this matter, including the trial date, are hereby stricken. All pending motions are also stricken,  
13 with leave to refile. Within 14 days of a decision by the Ninth Circuit on Defendants’ appeal of  
14 this Court’s qualified immunity ruling, the parties shall meet and confer and submit to the Court a  
15 joint status report indicating whether and how this matter should proceed.

16 DATED this 4th day of October, 2023.

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Barbara Jacobs Rothstein  
U.S. District Court Judge

ORDER